

Board of County Commissioners  
Leon County, Florida  
Special Public Meeting  
2<sup>nd</sup> and Final Public Hearing Fallschase  
Tuesday, December 6, 2005  
6:00 p.m.

The Board of County Commissioners of Leon County, Florida, met in Special Session for the Second and Final Public Hearing on the Chapter 163, Florida Statutes Development Agreement for Fallschase on December 6, 2005 at 6:35 p.m. with Chairman Proctor presiding.

*(Due to technical difficulties the start time of the meeting was delayed.)*

Present were Commissioners DePuy; Thaell; Sauls; Winchester; Grippa; and Rackleff. Also present were County Attorney Herb Thiele; County Administrator Parwez Alam; Special Counsel to the CAO, Cari Roth with Miller Brown & Olive; and Secretary Diane F. Norvell.

**Invocation and Pledge of Allegiance**

The Invocation was provided by Commissioner Proctor who then led the Pledge of Allegiance.

**Scheduled Public Hearing, 6:00 p.m.**

1. Second and Final Public Hearing on the Chapter 163, Florida Statutes, Development Agreement for Fallschase
  - Commissioner Proctor thanked everyone for their patience during the short delay due to technical problems.
  - County Attorney Thiele reported this meeting was advertised both as a 163 Publication and as a Special Meeting after reminding everyone the First Public Hearing on this matter was held in late October. The County Attorney suggested the following format:
    - Establish a time frame for the Applicant to make a presentation in the nature of an overview of the document before the Board, especially in regard to the changes in the document.
    - A presentation by Ms. Cari Roth, Special Counsel to the CAO.
    - Open the Meeting for a Public Hearing (mention that at the previous Hearing a 3-minute time limit was imposed).
    - Disclosure of any ex-parte information.

- Board Deliberation.

*County Attorney Thiele reported it is the CAO's position that anyone 'sworn' at the First Public Hearing was still under oath.*

Applicant Speakers:

Mr. Ron Carlson, Executive Vice President, A.I.G. Baker thanked the Commissioners for scheduling the Special Meeting and the Leon County Staff for their quick turn around and comment on the information submitted by A.I.G. Baker. He recognized the neighborhood groups whose representatives have worked tirelessly. He then summarized highlights of and changes made to the 163 Agreement:

- Commercial Space – reduced from 850,000 sq ft to 750,000 sq ft
- Office Space – reduced from 50,000 sq ft to 35,000 sq ft
- Residential Units remain the same 1,514 Units – ½ single family and ½ multi family or attached housing

Mr. Carlson reiterated the above-mentioned numbers are reductions in the density previously approved in the 1973 PUD and the 1974 DRI. AIG is not proposing any increase in the approvals granted. AIG has reached a signed Agreement with the Buck Lake Alliance, and the Weems communities, included as exhibits in the 163 Agreement.

Mr. Carlson pointed out:

- Houses Proposed for Lake Bottom  
AIG took the houses previously below the 51 ft contour and moved the pads above the 51 ft contour except on the 'fingers'. The two fingers are previously filled or disturbed areas on the floodplain. There are approximately 30 lots total.
- Houses on Fingers  
Will be built at the 54 ft elevation. Garages and roads will be at the 51 ft. contour. Disturbance in Lake Bottom will be minimal.
- AIG will demolish manholes sticking up out of the lake.
- AIG is installing a new sewer system serving just the houses on the fingers.
- All other utilities will remain above the 51 ft contour.
- AIG has received capacity confirmation from the City – as it relates to water, sewer, electric, (possibly gas as well).

Donations to County:

- 240 acres – Lake Bottom being donated to the County with exception of lake front homes and the finger areas
- All the right of ways required for widening of Buck Lake Road that AIG Baker owns
- One acre site to be used by County for a public building  
Total 235 or 240 acres of property AIG is donating to public domain.
- AIG has volunteered to make all the connections - driveway connections to Mahan and Buck Lake Road including traffic lights, accel/decel lanes, everything to serve the property in a safe and efficient manner.

Traffic Mitigation:

AIG will:

- Put a major entrance in off of Mahan therefore a lot of traffic will be taken off Buck Lake Road.
- Perform an operations traffic study – to ensure everything is in the right place and works efficiently.
- Limit traffic impacts – peak hour trips 3,659 or less – (ongoing control)

Traffic Improvements:

To Buck Lake Road – Mahan intersection  
Widening Buck Lake Road to a 4 lane road to the boundary of Fallschase – 5 lanes at intersection of Buck Lake and Mahan

AIG has a question on:

Received a request not to cut down any patriarch trees – will protect ones along lakefront. Will need to trim limbs that are safety hazards – but will incorporate this in the PUD.

Jobs Created:

500 in Shopping Center alone. Have provided a detailed analysis prepared by the Greenburg Law Firm.

- Commissioner Proctor complimented the professionalism Mr. Carlson has shown noting how everyone has commented on how cooperative A.I.G. has been as an Applicant. Commissioner Proctor asked if anyone had a dollar amount representing everything AIG is donating to the County.
- Mr. Carlson said it is equal to or exceeds \$20 million.
- Commissioner Proctor asked the County Administrator what this Development would mean to Leon County's tax base.

- County Administrator Alam said the number would be quite large when property taxes and the sales tax from the 750,000 sq ft of commercial is figured. County Administrator Alam stated he could provide an exact figure by the end of the meeting.
- Commissioner Proctor stated he wants the Board to see the 'big picture'.
- Mr. Carlson projects: \$14 million annually in sales taxes coming to Leon County:
  - Approx. \$400 million added to the tax base in terms of the commercial alone
- Commissioner Proctor stated that over the years this amount will be a significant contribution to Leon County and the economic value is extraordinary.

Speaker:

Mr. Robert Apgar, Attorney with Greenburg Trolley, representing AIG Baker indicated Special Counsel Cari Roth asked him to present some issues for the record.

- Exhibit "F" indicates AIG will donate right of way for Buck Lake Road widening
  - clarification is that AIG Baker will donate all of the right of way 'that it owns'
- Exhibit "B2" –
  - should be treated solely as an illustrative exhibit. Master Plan should be the primary illustration for this.
- Counsel has been given the contract for AIG Baker to acquire the 7.7 acre excluded parcel.
  - still working on the 1 & ¼ acre parcel – close to a contract.

Mr. Apgar related Ms. Roth provided him a record of exhibits and documents that are 'part' of the record for this Hearing. It includes the analysis of the DRI, the substantial deviation issue presented. Mr. Metcalf was present to answer any questions on that analysis.

Speaker:

Ms. Cari Roth, Special Counsel to the County stated this is a much improved agreement; but wanted to address a few issues:

- Commissioner Sauls requested a memorandum on DRI and vesting issues – Ms. Roth and the Applicant have provided one for the record.
- Lingering Issues:
  - Out Parcels – 2 commercial (others residential)

- Special Counsel has been provided with a contract for the largest commercial parcel. Agreement addresses bringing those additions into the Agreement without needing to amend the Agreement.

Suggested language for the Residential Parcel:

- Out parcels that are part of the original DRI – may have a problem if rights are not assigned to those parcels
- Contract – Commercial acreage
- Comments from Public Works – need clarified documents to go along with some exhibits and probably will resolve the majority of these issues
- Heritage Oaks – nothing in the Agreement to reflect the protection of these trees.

Ms. Roth then highlighted points of a hand-out titled "County Suggested Amendments" included in the public record:

Page 2, last Whereas on the page: Strike the following:

,without waiving any rights, entitlements, claims or defenses as to any remaining vested rights on the Property, including in particular the Southern Property

Page 4, Paragraph 1: Strike the following:

This Agreement approves and authorized ~~commencement of a portion of~~ the development previously approved by the County in the Fallschase DRI.

Page 5, Paragraph 3: Add to end of paragraph

Residential lots in the excluded properties shall be included in the maximum residential development authorized by this Agreement whether or not owned by the Applicant.

- Agreed to by Applicant -

Page 10, Paragraph 9(b) – Replace the last sentence of the paragraph as follows:

The development standards may be modified only by written agreement between the Applicant and the County as evidenced by BCC action. ~~If the Applicant and the Growth Management Director fail to reach agreement, the matter shall be submitted to the BCC for decision.~~

Page 16, Paragraph 12: Modify the last three sentences as follows:

~~The development standards may be modified only by written agreement between the Applicant and the County as evidenced by BCC action. In the event that any County regulation conflicts with the development approved in this Agreement, the PUD Concept Plan, or the Final Development Plan, and such conflict cannot be resolved by reference to the Fallschase Development Standards set forth in Exhibit "D", or the Waivers and Exemptions set forth in Exhibit "E," the parties will confer and agree on a development standard that will allow completion of the development authorized herein as reflected in the Concept Plan or the Final Development Plan. The development standards may be modified only by written agreement between the Applicant and the County as evidenced by BCC action. If the Applicant and the Growth Management Director fail to reach agreement, the matter shall be submitted to the BCC for decision.~~

Page 17, Paragraph 14:

The Applicant commits to funding and constructing the transportation improvements listed in Exhibit "F". These improvements are conceptual in nature at this time and will be refined in the future based on a traffic operations analysis approved by the County. The Applicant has agreed to make additional improvements ....  
- Agreed To By Applicant -

Page 19, Paragraph 15(b) in the fourth line strike:

"in the traffic operations study"  
- Agreed To By Applicant -

Page 24, Paragraph 34 – Revise the paragraph.

New Paragraph 35 and renumber subsequent paragraph

- Commissioner Grippa asked Ms. Roth what, besides the Release did she find not to be satisfactory.
- Ms. Roth stated she has followed the direction of the Board; but wanted to detail the 'suggested amendments'.

*Commissioners asked Ms. Roth questions about the suggested amendments.*

- Commissioner Thael asked the County Attorney if the Release provided by AIG Baker from Lamar Bailey was sufficient. County Attorney Thiele stated the Release is 'woefully inadequate' to protect the County's interests from potential claims by current or former persons with an interest in the real property who could bring a claim that they may have had or could have in the future.

- County Administrator Alam recommended wherever the term "Growth Management Director" is used in the Agreement it be replaced with "County Administrator".
- Commissioner Proctor stated Mr. Bailey is trying to comply with what the County has asked for in regard to the Release. Commissioner Proctor pointed out that receipt of the Release from Mr. Bailey was one of the last items the County desired to make this Agreement plausible. He stated this shouldn't be a major stumbling block.
- Commissioner Sauls asked County Attorney Thiele what he meant specifically when he referred to the Release provided by Mr. Bailey as being 'woefully inadequate'. County Attorney Thiele informed the Board the CAO drafted a Release around 4:00 p.m. they would much prefer.
- County Attorney Thiele explained there have been a number of owners of the Fallschase property over the last 33 yrs. The Release given to the Board is not sufficient to protect the County from owners other than Mr. Bailey. There have been scores of corporations active and inactive, partnerships, and property owners that are a subject of dispute. County Attorney Thiele gave a detailed history of the ownership of the property and wanted a standard phrase added to the Release from Mr. Bailey that would release the County from any claims which the County has had, currently has, or might have in the future with regard to the development of the property. There is an open area the CAO is concerned with. County Attorney Thiele stated this Release was good; but it is not complete.
- Commissioner Proctor asked if the Applicant agreed, at its expense, to indemnify the County for any costs arising out of any challenges to the Agreement would this clause satisfy the points the CAO is making.
- County Attorney Thiele answered no. This deals with just the defense capability in a challenge to the Agreement by AIG Baker.
- Commissioner Proctor then asked why the language was presented as satisfying the Clause on page 24; but, now the CAO is presenting something that as a negotiator the Commissioner has not heard of before.
- County Attorney Thiele reported a request for a Release from AIG Baker and a request for a Release from the predecessors in interest before AIG Baker acquired the property are both issues that have been on the table since June. However, it was not until the October submission of the documents that the CAO suggested language in the AIG Baker Release contained in the Agreement. However, that document has been in the possession of the negotiators for AIG Baker since August or September. It was not until 3:30 this afternoon that the second component part was submitted for the CAO's review – that is the Release from the predecessor's in title.

- Commissioner Proctor expressed his frustration over this issue since the point the CAO brought up is not in writing. Attorney Roth is asking the Board to accept underlying language, adopt it into the Agreement and when it is modified for the final signatures it would be satisfactory. Commissioner Proctor stated he does not see this as a major barrier.
- Commissioner Grippa asked the County Attorney if the Board could adopt a Release Agreement that states as far as Mr. Bailey is concerned – Mr. Bailey, any of Mr. Bailey's corporations any other iteration thereof shall release the County from damages, etc. He asked if there wasn't one catchall phrase that's a sentence long that will take care of this issue. Commissioner Grippa stated the County has to be sure Mr. Bailey doesn't have the ability to release people other than himself and his corporations that he is 50% owner of and asked the County Attorney if that was not correct.
- County Attorney Thiele stated that was true.
- Commissioner Grippa asked if there wasn't a general language that would say Mr. Bailey hereby releases and any corporation by which Mr. Bailey owns 50% either now or before - releases the County.
- The County Attorney stated his office prepared a document along those lines.
- Commissioner Grippa stated there were a number of different issues but at this point two that stand out:
  - 1) The Release from Mr. Bailey
    - Seems simple – add language to the Release stating that whatever Mr. Bailey owns, or that he himself, can't sue the County.
  - 2) Indemnifying the County against other lawsuits
    - What could Mr. Bailey defend and not defend.
- Commissioner Grippa asked the County Attorney if Mr. Bailey could release something that he doesn't own more than 50% of.

County Attorney: Yes, if he is the corporate officer of the corporation that owns 50% or more.

*Commissioner Grippa and County Attorney Thiele discussed the Release with Commissioner Grippa asking several questions that could possibly render a means to resolving this issue.*

Speakers:

Mr. Ron Carlson, Executive V.P. AIG Baker wanted to respond to the first question. The issue between Mr. Bailey and the County has nothing to do with him. Mr. Bailey signed a sales contract for every one of the entities that owns

property to the satisfaction of his title company and his attorney. Mr. Bailey has the power to sign the Release. If the signature block is wrong that is not Mr. Carlson's problem.

#2 Indemnity – he did not receive this language until 4:30 today. It looks like it takes away his right to sue the County if all the current staff, etc. would somehow disappear someone could come in and say you can only build one hundred houses. Mr. Carlson said he could not give up a right like that.

Mr. Rick Bateman, attorney for Lamar Bailey stated that despite the County Attorney's interpretation, Mr. Bailey signed the Release as Lamar Bailey, individually, and as the representative of the current owners of those portions of the Fallschase DRI, PUD which are contained in the legal description attached hereto as Exhibit A. Mr. Bateman stated the Release is what County Administrator Alam asked him to provide.

Mr. Bateman read the list of everyone named in the Release. Lamar Bailey is only releasing the County for this property. Mr. Bailey cannot release the County for something they might do in the future. This is absurd. Mr. Bateman declared this document (Release from Lamar Bailey) is releasing the County in the broadest terms Mr. Bateman has ever seen - and is exactly what the County Administrator asked him to provide. This Release is sufficient.

*Lengthy Board discussion ensued regarding the Release including:*

- 'woefully inadequate' – County Attorney's statement regarding the Release
  - to be caught up in a technicality at this point is disappointing
  - County Attorney has been requesting this Release since July
  - desires to move past this issue, work out the language
  - can this be fixed in 10 or 15 minutes, or through a short adjournment
- County Attorney Thiele stated that if all of the property owners, currently with an interest in the property execute a general release and if Mr. Bailey has the delegated agency or corporate officer status to execute a release on their behalf. If AIG would agree to do that – the Release could be acceptable.
  - Commissioner Proctor asked if Mr. Bateman could provide in writing the suggestion the County Attorney just made.
  - Mr. Bateman stated he would speak to his client.

Speaker:

Mr. Bob Apgar, attorney for AIG Baker wanted to respond to comments made by Ms. Cari Roth, Special Counsel.

The language on page 24 names the Applicant, the Applicant is AIG Baker - that has nothing to do with Mr. Bailey. What the County Attorney is asking for is totally unreasonable. He could not advise his client to sign what the County Attorney is asking for.

Mr. Apgar reported they could agree to the changes Ms. Roth has asked for except:

First paragraph up to the point where it says 'at its expense'. They can't agree to indemnify the County. It is in *their best interest* to defend the Agreement; but, they can't write a blank check to the law firm the County employs to defend its interests with whatever costs may be involved. They would be happy to pay their own fees.

- Commissioner Proctor asked if the County agreed to pay attorney fees in a previous 163 Agreement. County Attorney Thiele stated he recalled the County agreeing to 'jointly defend'.

*Commissioner Proctor and County Attorney Thiele discussed the County's past actions regarding payment of legal fees and 163 Agreements.*

*Commissioner Thaell asked the County Attorney detailed questions about the Release.*

Mr. Bob Apgar, asked that the Commission in the first paragraph after the word 'expense' insert the reference 'subject to the Applicant's right to terminate (pursuant to paragraph 28) the Agreement' and pointed out that if the Agreement is terminated the County would have no costs to defend.

Mr. Apgar's response to Ms. Roth's proposed changes:

Ms. Roth's proposal re: pg 24 paragraph 34

AIG: Revise- and strike the 'and indemnify the County for any costs arising'. Want the rest of the language to come out.

Ms. Roth's proposal re: language at the bottom of the page - paragraph 35 and renumber subsequent paragraphs

AIG: If there is a challenge the whole Agreement becomes void. 'shall be construed to nullify and all representations as the Applicant's entitlement'. The sentence on the third page needs to be deleted.

AIG: Believes Ms. Roth has withdrawn her request for the change regarding the 'patriarch' or 'exceptional' trees. They will take this up in the PUD.

Ms. Roth's proposal re: First page - striking language in the 'whereas'

AIG: That is a 'whereas clause' - taking this clause out is meaningless

Ms. Roth's proposal re: Second change

AIG: Her language seems to dispose of the rights given in the Development Agreement – don't want to make this change – have waived rights to seek any additional permits, etc.

Ms. Roth's proposal re: third change – residential lots

AIG: Agree to that change

Ms. Roth's proposal re: fourth change

AIG: Agree to that. Don't see the point of coming back to the Board again and again with every change. Modify the language.

Ms. Roth's proposal re: Page 16 Paragraph 12

AIG: Agree to that change, except for leaving in the last line, and agree to substitute County Administrator for Growth Management Director as stated earlier.

Ms. Roth's proposal re: Page 17 Paragraph 14

AIG: Agree to

Ms. Roth's proposal re: Page 19, Paragraph 15B

AIG: Agree to

Speaker:

Mr. Bateman stated he agreed to add on the first paragraph of the Release as written, 'Mr. Bailey attests that he is the representative of all of these owners by covenant as an Officer or as an Agent'.

- County Attorney Thiele stated the phrase 'and has the full authority to execute this Release on their behalf' is missing. Mr. Bateman agreed to include this phrase.
- Commissioner Thael stated he is concerned about the potential liability to the taxpayers of Leon County for tens of millions of dollars if we were unable to enforce this Agreement – we could be sued. He asked the County Attorney if this was correct - that the County and the taxpayers in Leon County could face a substantial risk.

- The County Attorney stated the Release does not cover that contingency.
- Commissioner Thaelle stated he doesn't see how this situation can be resolved and he is sorry things got this far.

Speaker:

Mr. Carlson wanted to respond to Commissioner Thaelle's comments. In regard to the 7 and ½ acre parcel. He has that contract, the County has that contract. It provides they can enter into the 163 Agreement. They have a signature page to acquire the 1.25 acres from the Seller they will fully execute that tomorrow. They are buying every lot including the four houses that currently exist in Fallschase to protect the integrity of the Development. The only lot they cannot buy involves 5 houses. From a businessman's perspective if AIG buys the property – What is Lamar Bailey going to sue the County over – what grounds does he have – he has received his value for the entire property. 2) If we DON'T buy the property that Release goes away – and you've still got Mr. Bailey out there WITH possible grounds at that point.

- Commissioner Rackleff asked for personal privilege to recognize his aide, Kate Brady who is back at work. Ms. Brady was applauded.
- Commissioner Proctor encouraged the public not to have any misperceptions that any of the Commissioners are 'upset'. This is their way of rolling up their sleeves on Tuesday nights and getting the work done for the citizens of Leon County that they have been elected to do.

**Citizens to be Heard on Non-Agendaed Items: (3 min. limit; non discussion by Commission**

Speakers:

Carlos Alvarez, representing Buck Lake Alliance (BLA) stated the Alliance has entered into an Agreement with Ron Carlson and AIG Baker and want this Development to go forward and is glad to see Lake Lafayette put into the public hands. Thanked County Staff for their hard work. Two overriding factors – 1) AIG will build a 'quality' development and 2) realizes the importance of the environmental concerns.

Lillie Mae Covington, read an open letter to the Commission, AIG Baker, Lamar Bailey, Buck Lake Alliance, neighbors and others from the greater Tallahassee Florida community from the owners of 59 acres down Christie Road the second largest single parcel of property abutting upper Lake Lafayette. Her main concerns being: access to Christie Road, how the development will affect the area and current property owners, wants to ensure development complies with current regulations.

- Commissioner Proctor asked Mr. Carlson if he could address Ms. Covington's concerns since she is an adjacent property owner.
- Mr. Carlson responded he was not familiar with Christie Rd. However, the stormwater drainage will be handled in accordance with what was provided in the 163 Agreement and should not affect her property.
- Commissioner Proctor asked Staff to address the issues raised by Ms. Covington.

John Corbin, Chairman of "Save Our Gateway" group brought his support and support of the Agreements and Developments proposed by AIG Baker and commended AIG. Asked that two concerns be addressed: 1) traffic and 2) conservation easement. Wanted to ensure the 3,659 trips would be followed.

Lt. Leroy Peck, Weems Plantation Owners Association, thanked the Commission for the courage to open up this process. Thanked Carlos Alvarez, John Dew and the BLA, County Staff, County Administrator Alam for attention to details his group presented and their prompt responses, Ron Carlson and the AIG Baker Group. The Weems Group supports this Agreement and looks forward to having Fallschase as their immediate neighbor.

Gerry Miller, property owner stated that he appreciated the ability to be a part of the process. Concerned about the wildlife that uses the lake bed as its home.

Jim Wells, Vice President of Weems Home Owners Association stated virtually every issue they brought up has been resolved – several pages worth. They are in Agreement with the Development.

Zoe Kulakowski, resident stated she was concerned about stormwater drainage from the development and gave a history of the 1948 Flood. She noted extreme flooding can occur from sources other than hurricanes i.e. tropical storms.

Martha Wellman, representing the County Water Advisory Committee stated they had two concerns: 1) need for a higher elevation to prevent flooding because of increased hurricane activity and 2) potential for pollution going into drinking water via sink in Lake Lafayette.

Norene Chase, representing Big Bend Sierra Club and Linda Jamison, Chair of group – talked about the potential compromise of water quality in the Florida Aquifer and risk issues with 80 homes proposed for construction on the outer extent of the lake bed on stilts and a high water buffer.

John Dew, President of Buck Lake Alliance stated the BLA has a signed Agreement with AIG Baker who addressed 28 issues they had. This is not the

end; but the beginning of working with AIG. Recognize traffic will be a huge problem unless Hwy 90 is widened.

Janet Bowman, representing 1,000 Friends of Florida and Charles Patterson reiterated a concern – process being used to address the development. They think this Development should be going through the DRI Notice of Change Process.

Richard Parker – there is a flagrant nature of violations and disregard for applicable case law that is occurring. Presented several grievances and distributed a hand out detailing issues like commercial space. Doesn't see documentation where this Agreement is vested for the amount of square footage.

John Hgorick, Chairman of the Panhandle Citizens Coalition, stated the Agreement still has major flaws in the areas of stormwater and lake protection, open space requirements and traffic. Urged the Commission to oppose the development calling it the creation of 'urban sprawl'.

George E. Lewis, II stated there is too little talk about indemnities from Mr. Bailey. This Agreement represents a terrible bait and switch on the public. Were told the additional property would meet the Comp Plan requirements. Asked if any Commissioners had read Exhibit E, Paragraph 13, the list of exemptions being given to the Applicant. Detailed the requirements the Applicant would be exempt from.

Lisa Duchene, resident asked the Commission and the Developer about the impact of the schools in the area. As a parent of children attending schools in the area she wants to know how the schools will be able to handle another 500 to 1,000 new students realizing that last year Buck Lake Elementary was capped at full attendance. Wants an answer to that question.

- Commissioner Proctor asked Staff to respond.
- County Administrator Alam stated the School Board has to provide for the schools since it is a vested DRI. It is the School Board's responsibility.
- Commissioner Grippa remarked the Developer was vested for was 2,572 but through Commissioner Proctor's leadership and negotiations a density reduction has made this number 1,514. stated he appreciated Commissioner Proctor's leadership noting he had already reduced the number of homes to be developed by 1,000 and consequently reduced the School Board's task.
- Commissioner Proctor thanked all the participants in this matter for their level of civility - especially those impacted most by this development for their restrained and gracious sense of inquiry regarding major concerns about their property,

traffic, roads, futures, and quality of life. Commissioner Proctor made the following points:

- Owe a salute to the citizens who have conducted themselves so professionally and thanked the Staff.
  - Public wants this property to come as a public conservation asks the Board to defer to Commissioner Rackleff to take leadership in meeting with groups to come up with a Plan to make this piece of property being committed to conservation.
  - Commissioner Rackleff has attended every meeting related to this Agreement.
  - Wants Staff to look at concerns relayed by Mrs. Lillie Mae Covington – owner of 59 acres adjacent to this property. Look at Christie Street and the ingress/egress issues and their ability to enter safely.
  - Schools – as County Administrator pointed out this property was vested a number of years ago pre dating even the existing schools.
- County Attorney Thiele advised to the extent Commissioners have had ex parte matters they wish to disclose on the record they do so prior to deliberation. The CAO put together an index of those documents they believe have been observed by one or more Commissioners for the record. A list of documents simply to disclose what has been available for review.

Commissioner Winchester moved, seconded by Commissioner DePuy to conduct the 2<sup>nd</sup> Quasi-Judicial Public Hearing on the Chapter 163 Florida Statutes Development Agreement for Fallschase and vote to approve the proposed Development Agreement for Fallschase, with amendments including the release and indemnification amendments, and the lake bed remaining under a conservation area.

#### **Ex-Parte Communication Disclosure by Commissioners:**

##### **Commissioner Winchester:**

To his knowledge other than what is contained in the CAO's list and conversations with Cari Roth, except when various people stopped him in the hallway and spoke with him about this matter.

##### **Commissioner Thael:**

Had access to all the documents on the CAO's list. In an effort to gain a balanced and deeper understanding of all the proposals and issues involved he spoke with parties on both sides of this issue including – Mr. Carlson, Mr. Apgar, Miss Martin, Mr. Voss, Mr. Dew, Mr. Alvarez, the BLA, Ms. Roth, County Administrator, and dozens of e-mails supporting Fallschase.

**Commissioner Sauls:**

Under the advice of the County Attorney she has not met with any of the parties on the Fallschase issue. Has only spoken with Cari Roth. Has copies of a few e-mails she inadvertently opened for the Clerk.

**Commissioner DePuy:**

Who hasn't he met with. He and his Aide made copies of all the e-mails he has received and turned them into the CAO's office. Has also met with Mr. Apgar, Mr. Voss, Ms. Martin, Cari Roth, Mr. Bateman, Mr. Bailey, Mr. Dew, Mr. Alvarez, Mr. Peck. All these conversations were to gather knowledge and information to form a position as to how the Commission was going to vote on this. If he has left anyone out it is inadvertent.

**Commissioner Rackleff:**

Has spoken with just about everyone in the Chambers. Numerous members of the BLA, Weems Plantation, Thousand Friends of Florida, Florida Wildlife Federation, Sierra Club, brief conversation with representatives from Fallschase, talked to several reporters, has written about this, circulated public documents, some on request some on his own initiative.

**Commissioner Grippa:**

The only person he can recall meeting with is Mr. Rick Bateman stating the nature of their conversation was they have something in the Agreement that protects the County from a lawsuit. Was on the Preston Scott Show – nature of that conversation was that Commissioner Rackleff was not going to support anything. For the record, Commissioner Grippa noted he did not have the opportunity to meet with Ms. Roth as everyone else did. Wants to make sure that is on the record. For some reason it was not scheduled or afforded.

**Commissioner Proctor:**

His Aide, Mr. Delane Adams has submitted his conversations. He was on a radio show with Commissioner Rackleff and Mr. Bateman. There were a number of people who approached him to talk about the issue – on elevators, restaurants, in stores.

**Board Discussion Resumed:**

- Commissioner Thaeli stated he wanted the record to really reflect the following:

They are dealing with a vested property of over 700 acres that really had about 745,000 vested commercial/office originally. The mix has changed. A

lot more commercial. A lot less office. Poignant point was made about the impact of commercial traffic vs. office traffic. The voidance of concurrency for future development east of Fallschase is a trouble to our community. The issue with the BLA Agreement for him is that on page 55 of 65 it says that it's not an agreement – it's a handshake. The school concurrency issue is important. The State last year addressed this and it will go into effect December of 2008 for any developments that occur subsequent to that the Developers will have to do a proportionate share of the impact on the schools. This Agreement will happen prior to that so local government will have no way to enforce any contribution by a Developer toward the impact on schools. Commissioner Thaeli stated it has been a mistake not to terminate vested rights after a period of 10, 15 or 20 years after development doesn't take place – needs to be addressed.

**Commissioner Thaeli asked the County Attorney a series of questions:**

Commissioner Thaeli: Is the DRI vested for what AIG is asking for.

*County Attorney: No*

Commissioner Thaeli: Is it consistent with the Comp Plan.

*County Attorney: No*

Commissioner Thaeli: Is it consistent with current land development regulations.

*County Attorney: No*

Commissioner Thaeli: Has a request been made to the Department of Community Affairs as to the necessity of completing an NOPC based on what is vested on this site.

*County Attorney: It has not.*

Commissioner Thaeli: Do you believe that an NOPC is required.

*County Attorney: That has been our suggestion from the beginning, Yes.  
That has been a subject of dispute, but Yes.*

Commissioner Thaeli: If this Agreement is approved; what does this mean for capacity for other landowners east of Buck Lake Road on Hwy 90, in particular.

*County Attorney: Without the completed Traffic Study. The answer is he doesn't think anyone knows the answer.*

Commissioner Thaeli: The motion as it stands addresses Counsel's issue of indemnification.

*County Attorney: To be honest he was not clear what the intent of the Motion was and he intended to ask Commissioner Winchester to re-state the Motion.*

Commissioner Thael: Have discussed the issue of all the properties in the DRI being signatories to the Agreement and your answer to that was.

*County Attorney: They are not.*

Commissioner Thael: On the County Suggested Amendments provided by Ms. Roth on Page 2. The last 'whereas' on the page recommends striking the following language 'without waiving any rights, entitlements, claims or defenses as to any remaining vested rights on the property, including in particular Southern Property – is that the Lake Bottom.

*County Attorney: Yes.*

Commissioner Thael: What other invested rights on the property, might there be that we should be aware of -or entitlements or rights or claims or defenses.

*County Attorney: He believes the reason Ms. Roth suggested that that 'whereas clause' be stricken and the language on page 4 paragraph 1 be added was the concept that the development order for Fallschase even as amended is significantly vague in various respects. To the extent the Board was going to approve of a Development Agreement that it contain all of the development rights for all four corners of what constitutes the DRI and that there will be no development rights remaining when this Agreement is signed – save the five lots that Mr. Moore still owns. A concern that unless we strengthen the language that somebody, someplace, sometime could make a claim that they have vested rights to some further development.*

- Commissioner Grippa stated, for the record, since this is a quasi-judicial hearing, if the County gets sued on this if any one of their testimony is used he hopes the County Administrator and County Attorney will bring this information back to the Board. Certainly their fiduciary duty as commissioners is to protect the County at all times. And if they are setting up means for a lawsuit by a small group of people, he wants it noted that it be brought back to the Commission. Thanked the BLA, AIG Baker, Mr. Baker, Mahan Drive Gateway Committee for coming together with a common solution. Is everybody completely happy – no. Does everybody have something they can live with – yes. Now the goal is we have an agreement and a compromise that allows us to move forward. –

- Inside the urban service area
- Vested DRI

Commissioner Grippa stated thanks to Commissioner Proctor's negotiation this will have less environmental impact, as well as the purchase of the lake bottom – This keeps getting lost. The Board sent Commissioner Proctor to 'purchase the lake bottom' and it is now 'being donated' - that is just fantastic. He thanked Commissioner Proctor.

Commissioner Grippa asked the maker of the motion to consider:

- 1) amend – 'conservation easement' aspect should not be in the 163 separate motion.
- 2) County Attorney's point is good re: indemnification 'language'  
Suggested language County Attorney read earlier – all the corporations, etc.  
County Attorney's 'exact language'.

Commissioner Grippa stated he is ready to vote subsequent to addressing these issues.

Commissioner Grippa asked the maker of the motion to amend the motion to include the following:

The densities approved by the passage of the Fallschase Development Agreement and its conceptual Master Plan (Residential – 1,154 Units; Office – 35,000 square feet and Commercial – 750,000 square feet) represent a reduction in each of the categories from the amount that would be allowed under the original Fallschase DRI/PUD, and that the general uses and general location of uses are consistent with the approved DRI/PUD conceptual layout of the original Master Plan, and further and differences in the location of the uses are consistent with the provisions contained within the Fallschase DRI/PUD which provide the flexibility to make these types of changes which are primarily the result of the County's request to move development out of the floodplain to the maximum extent possible, and therefore, do not constitute a change to the previously approved DRI/PUD, and that the Board confirms that the Board agrees with the three items listed by our Special Counsel, Cari Roth on page 6 of her Memo to the Board of County Commissioners, dated November 14, 2005 related to the substantial deviation and vested rights issues.

*Commissioner Grippa stated he read these amendments into the formal record of the quasi-judicial hearing to protect the County from lawsuits.*

Commissioner Winchester moved the amended motion, seconded by Commissioner DePuy to conduct the 2<sup>nd</sup> Quasi-Judicial Public Hearing on the Chapter 163, Florida Statutes, Development Agreement for Fallschase and vote to approve the proposed Development Agreement for Fallschase, with amendments including the release and indemnification amendments, and the lake bed remaining under a conservation area. The densities approved by the passage of the Fallschase Development Agreement and its conceptual Master Plan (Residential – 1,154 Units; Office – 35,000 square feet and Commercial – 750,000 square feet) represent a reduction in each of the categories from the amount that would be allowed under the original Fallschase DRI/PUD, and that the general uses and general location of uses are consistent with the approved DRI/PUD conceptual layout of the original Master Plan, and further and

differences in the location of the uses are consistent with the provisions contained within the Fallschase DRI/PUD which provide the flexibility to make these types of changes which are primarily the result of the County's request to move development out of the floodplain to the maximum extent possible, and therefore, do not constitute a change to the previously approved DRI/PUD, and that the Board confirms that the Board agrees with the three items listed by our Special Counsel, Cari Roth on page 6 of her Memo to the Board of County that the Board confirms that the Board agrees with the three items listed by our Special Counsel, Cari Roth on page 6 of her Memo to the Board of County Commissioners, dated November 14, 2005 related to the substantial deviation and vested rights issue;

The Applicant takes the position that the development program in the proposed Development Agreement is:

- (1) Within the scope of the original DRI approval and therefore, not a change that triggers requirements to modify the DRI development order or conduct a substantial deviation analysis;

And that the development area within the original DRI is:

- (2) Vested from the application of the Comprehensive Plan in all aspects, (not just for intensity and density of land uses); and
- (3) Vested from all provisions of the EMA or other Codes not in existence at the time of DRI approval.<sup>2</sup> The motion carried 5-2, with Commissioners Rackleff and Thael opposed.

• Commissioner Rackleff made the following remarks:

- This is an illegal Agreement
- Should not ignore advice from County Attorney not to proceed
- This will not be a quality development
- A.I.G. should not be writing their own development standards
- Exemptions – nothing to prevent clearing all trees except for on the lake
- Tree replacement requirement is ¼ of what is usually is
- Approximately 80 homes in the flood plain
- Floodplain line in 1940's is not up to date
- Violates Lake Lafayette Special Development Zone
- Thinks this is a very big mistake
- 681 jobs created - calculates to about \$11, 300 annually per job barely minimum wage. Jobs created will not have health insurance
- Not 'net' jobs – There will be a zero sum gain here after Walmart goes up – What happens to Publix. A lot of businesses will be replaced by this new development.

<sup>2</sup> Property added in the 2005 amendment to the DRI development order is expressly subject to the current comprehensive plan and EMA and all other Code provisions.

- Tremendous economic impact – this is an illusion
  - Total sales projected \$197 million - \$7.7 million is payroll. remainder of sales that will go somewhere else. Money that flows out of our economy
  - This will make us better consumers not better producers.
- Commissioner Rackleff stated he is voting against this and urges his colleagues to do the same.
  - Commissioner Sauls stated this has been a very difficult issue. The bottom line though is that Fallschase is a vested DRI. The Board's job is to make it the best development that it can be. All the associations, BLA, Weems Plantation and many other groups have worked together and come up with what she believes is a good Agreement now. Early on she had questions and reservations regarding the 'substantial deviation' issue. Commissioner Sauls appreciates all the information Staff, Ms. Roth, Mr. Apgar has provided her with. The version she sees now is much different and improved from earlier Agreement. She supports the motion on the floor.
  - Commissioner Thaell was offended by the remark made by another Commissioner regarding his questions for the County Attorney. The public has a right to know the answers to the questions he asked. Stated he was elected at-large to look out for every citizen of this County.

*Commissioner Thaell spoke at length regarding citing the issues he raised earlier as reasons to vote against this Agreement.*

- Commissioner DePuy stated he wanted to thank all the parties involved. He had questions and concerns and early on would not have voted to approve this. He is voting to approve this Agreement tonight. Stated the Board had an obligation because of the vesting back in the early 1970's. This never was something the Board had the discretion to use 2005 laws on. He is also an at-large Commissioner. Thinks there would have been lawsuits if the County would not have approved this Agreement since it is a vested Agreement. This is an excellent opportunity to finally move forward on this. Intends to vote for the motion.

Commissioner Winchester wanted to clarify he wants his motion to include the changes the Applicant and the County have agreed on for the record.

- Commissioner Proctor thanked the Commission for the opportunity to participate and represent the Board in the negotiations of this Agreement. Commissioner Proctor stated he has given his best.
- **Commissioner Proctor stated he wanted to ensure the following statements are on the record:**

The 163 instrument is an instrument that manages growth in our state. Our legislature had the wisdom and vision to appreciate that Florida is a fast growing state. But among the 67 counties there is no one identical fingerprint in terms of natural features, carstic issues, coastal concerns, flat areas, hilly areas. The legislature wanted to afford counties the ability to accommodate growth and manage it through a means that was not uniform since the counties are not uniform - i.e., the geography of the state - in coastal/elevation, etc. In working with the 163 when the state delegated authorities to counties to try to form agreements - he wants the citizens to know that Leon County has acted in 'good faith' in fulfilling this document as required by law.

For the record, Commissioner Proctor wants to *take exception* to the comments made by Commissioners *that this is an 'illegal agreement'*. Personally this remark impugns everything he has tried to represent. The suggestion that the Board delegated him to negotiate this Agreement and the best that he would come back with was something 'illegal' is a blow in the stomach. Stated these remarks were very unfair to him. However the Commissioners vote, Commissioner Proctor wants to state for the record, with his own legal training he knows better than to participate in a six month diatribe in an illegal document and Agreement and purposefully, willfully, wantonly and recklessly do that. He would not do that and is really sorry such a comment was made.

- Commissioner Proctor stated he has given the best of himself he could for the Board. This Agreement will bring 500 jobs, 20 million dollars worth of concessions and numerous positive assets to Leon County.

Commissioner Winchester wants to make it abundantly clear that the language Commissioner Grippa read into the record earlier is part of the amended motion, and the conservation area is to be removed and brought back under a separate agenda item.

- Commissioner Proctor requested an agenda item regarding the legal fees submitted by the County Attorney to AIG Baker; since the County did not pay legal fees in the past for 163 Agreements.

Commissioner DePuy moved, seconded by Commissioner Grippa to agenda an item to discuss waiving the payment of legal fees submitted by the County Attorney's Office for work performed on the 163 Fallschase Agreement. Motion carried 5 - 2, with Commissioners Thaell and Rackleff opposed.

## Discussion Items by Commissioners

### Commissioner DePuy

Senator Lawson made his annual request for support from the County Commission for the Capital City Basketball Classic. Unlike the past, Senator Lawson is not requesting funds for advertising and t-shirts; but, rather is requesting the Board contribute the sum of \$5,000 to buy 600 tickets to the event for the disadvantaged youth in Leon County.

Commissioner DePuy moved, seconded by Commissioner Winchester to Agenda an item for the December 13, 2005 Meeting to consider a funding request from Senator Al Lawson for the Capital City Holiday Classic Basketball Tournament. Motion carried unanimously.

- Joint Dispatch – He and City Commissioner Lightsey have been involved in discussions for months and have reached a conclusion the County statutorily is the first in line on the EOC. The citizens can look to the County as being first in line in case of an emergency. Both Commissioners are concerned re: dispatch, EMS, fire trucks in and outside the city. Need to discuss funding to have an impartial third party come back with their recommendations in January.

Commissioner Sauls moved, seconded by Commissioner Rackleff to agenda an item to discuss joint City/County funding to hire an outside consultant to bring recommendations to the Board regarding joint dispatch for EMS and fire response. Motion carried 7-0.

- Need a Resolution to acknowledge "Human Rights Week" which is the week of December 12<sup>th</sup> – 16<sup>th</sup>.

- Tomorrow is the 64<sup>th</sup> anniversary of the attack on Pearl Harbor. Please take notice of that and show proper respect to our aged veterans who survived that terrible day of infamy.

### Commissioner Thael

Requested an agenda item for December 13, 2005 meeting to discuss funding request for First Annual Kwanza Extravaganza. Request granted.

There being no further business to come before the Board, the meeting adjourned at 10:10 p.m.

\_\_\_\_\_  
Bill Proctor  
Chairman

ATTEST:

\_\_\_\_\_  
Bob Inzer  
Clerk of the Court